

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

JUAN CARLOS LASALLE-CONCEPCIÓN,  
et al.,

Plaintiffs,

v.

PEDRO TOLEDO-DÁVILA, et al.,

Defendants.

Civil No. 07-1647 (JAF)

**OPINION AND ORDER**

Plaintiffs, Juan Carlos Lasalle-Concepción, Lizette De La Cruz-López, and their conjugal partnership; and Samuel Antonio Vélez-Lugo, Elba Iris Méndez-Jiménez, and their conjugal partnership; bring this civil rights action under 42 U.S.C. § 1983 (2006) against Defendants, Pedro Toledo-Dávila, in his personal and official capacities; the Commonwealth of Puerto Rico Police Department ("PRPD"); and John Doe and Jane Roe, police officers or civilian employees of PRPD alleged to have participated in or acquiesced to the violation of Plaintiffs' civil rights. Docket Document No. 1. Defendant Toledo-Dávila moves to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on behalf of himself and PRPD. Docket Document No. 13. Plaintiffs oppose. Docket Document No. 16.

**I.**

**Factual and Procedural Synopsis**

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1 Unless otherwise indicated, we derive the following factual  
2 summary from the complaint. Docket Document No. 1. As we must, we  
3 "accept as true the factual averments of the complaint and draw all  
4 reasonable inferences therefrom in the plaintiffs' favor."  
5 Educadores Puertorriqueños en Acción v. Hernández, 367 F.3d 61, 62  
6 (1st Cir. 2004).

7 Vélez-Lugo suffered an accident while working as a police  
8 officer with PRPD. Between December 1996 and May 1997, he received  
9 medical treatment from the State Insurance Fund Corporation ("FSE"),  
10 Puerto Rico's medical service and workers' compensation provider for  
11 employees injured on the job. See 11 L.P.R.A. § 1b (2007). He  
12 apparently did not return to work after the accident. PRPD terminated  
13 him effective February 23, 1999, due to his alleged physical  
14 incapacity and because he had been out of work for more than twelve  
15 months.

16 Lasalle-Concepción also suffered an accident while working as a  
17 police officer with PRPD. Lasalle-Concepción received medical  
18 treatment from FSE between November 1997 and October 1998. He  
19 apparently did not return to work after the accident. PRPD terminated  
20 him effective September 16, 1999.

21 Each Plaintiff appealed his termination before the board of  
22 appeals of the Personnel System Administration ("JASAP") and obtained  
23 a reversal. PRPD then appealed JASAP's decision before the Puerto

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1 Rico Court of Appeals, which reversed, affirming PRPD's decision to  
2 terminate Plaintiffs.

3 After recuperating from their medical conditions, both  
4 Plaintiffs requested that they be evaluated by PRPD's Medical  
5 Evaluation Board, which is authorized by Puerto Rico law to certify  
6 police officers as fit to return to work. 25 L.P.R.A. § 3118 (1999).  
7 On May 1, 2001, the Medical Evaluation Board certified that Lasalle-  
8 Concepción was fit to return to work. At some point, the Medical  
9 Evaluation Board also certified Vélez-Lugo as fit to return to work.  
10 Defendants did not reinstate Plaintiffs following these  
11 certifications of fitness.

12 On December 21, 2004, then-Police Superintendent Agustín  
13 Cartagena ordered the Medical Evaluation Board to reevaluate  
14 Plaintiffs to determine their fitness to be reinstated. On  
15 December 27, 2004, the Medical Evaluation Board again certified that  
16 each Plaintiff was fit to return to his position. On December 30,  
17 2004, the director of the Medical Evaluation Board informed Agustín  
18 Cartagena of these results.

19 In a letter dated July 19, 2005, Toledo-Dávila, the new Police  
20 Superintendent, informed Plaintiffs that PRPD had decided not to  
21 rehire them because their medical conditions did not allow them to  
22 perform their duties as officers.

23 On July 19, 2007, Plaintiffs filed the instant complaint in  
24 federal district court, alleging that Defendants violated Plaintiffs'

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1 rights under 42 U.S.C. § 1983 and Puerto Rico law. Docket Document  
2 No. 1. On October 1, 2007, Defendant Toledo-Dávila moved to dismiss,  
3 Docket Document No. 13, and on November 9, 2007, Plaintiffs opposed.  
4 Docket Document No. 16.

## 5 II.

### 6 Motion to Dismiss Standard Under Rule 12(b)(6)

7 \_\_\_\_\_Pursuant to Federal Rule of Civil Procedure 12(b)(6), a  
8 defendant may move to dismiss an action against him, based solely on  
9 the pleadings, for the plaintiff's "failure to state a claim upon  
10 which relief can be granted." FED. R. CIV. P. 12(b)(6). In assessing  
11 a motion to dismiss, "[w]e begin by accepting all well-pleaded facts  
12 as true, and we draw all reasonable inferences in favor of the  
13 [nonmovant]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962,  
14 971 (1st Cir. 1993); see also Coyne v. City of Somerville, 972 F.2d  
15 440, 442-43 (1st Cir. 1992). We then determine whether the plaintiff  
16 has stated a claim under which relief can be granted.

17 A plaintiff must set forth "a short and plain statement of the  
18 claim showing that the pleader is entitled to relief," FED. R. CIV.  
19 P. 8(a)(2), and need only give the respondent fair notice of the  
20 nature of the claim and petitioner's basis for it. Swierkiewicz v.  
21 Sorema N.A., 534 U.S. 506, 512-15 (2002). We note that in order to  
22 survive a motion to dismiss, a plaintiff must allege facts that  
23 demonstrate "a plausible entitlement to relief." Rodríguez-Ortiz v.

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1 Margo Caribe, Inc., 490 F.3d 92, 95 (1st Cir. 2007) (citing Bell Atl.  
2 Corp. v. Twombly, \_\_\_ U.S. \_\_\_, 127 S. Ct. 1955, 1967 (2007)).

3 **III.**

4 **Analysis**

5 Defendants argue that Plaintiffs fail to state a claim under  
6 § 1983 because Plaintiffs had no property interest in employment with  
7 PRPD as required by the Fourteenth Amendment. Docket Document No. 13.  
8 Plaintiffs counter that Puerto Rico law confers upon injured police  
9 officers the right to be reinstated once they are certified as fit by  
10 the Medical Evaluation Board. Docket Document No. 16.

11 Under the Due Process Clause of the Fourteenth Amendment, public  
12 employees who possess a property interest in continued employment  
13 "cannot be deprived of that interest without due process of law."  
14 Figueroa-Serrano v. Ramos-Alverio, 221 F.3d 1, 5 (1st Cir. 2000).  
15 Such property interests are generally created and defined by state  
16 law. Id.

17 Puerto Rico law provides that a police officer may be terminated  
18 for physical or mental disability. 25 L.P.R.A. § 3117 (1999).  
19 "Should the physical or mental disability disappear, said member of  
20 the Force may be reinstated to service upon certification of the  
21 Medical Evaluation Board." Id. (emphasis added).

22 Plaintiffs argue that 25 L.P.R.A. § 3117 grants a disabled  
23 police officer the right to be reinstated once his disability  
24 disappears and he is certified as fit by the Medical Evaluation

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1 Board. Docket Document No. 16. However, the statute states only  
2 that the officer "may" be reinstated; it does not establish a right  
3 of reinstatement. See 25 L.P.R.A. § 3117.

4 Accordingly, we find that Plaintiffs do not have a property  
5 interest in reinstatement and we dismiss Plaintiffs' § 1983 claims  
6 against all Defendants.

7 Having dismissed Plaintiffs' federal claims, we decline to  
8 exercise supplemental jurisdiction over their associated Commonwealth  
9 claims. See Rivera v. Murphy, 979 F.2d 259, 264 (1st Cir. 1992)  
10 (citing Cullen v. Mattaliano, 690 F. Supp. 93, 99 (D. Mass. 1988)).

11 **IV.**

12 **Conclusion**

13 In accordance with the foregoing, we hereby **GRANT** Defendant's  
14 motion to dismiss, Docket Document No. 13, and **DISMISS** Plaintiffs'  
15 complaint in its entirety. We dismiss Plaintiffs' federal claims **WITH**  
16 **PREJUDICE** and dismiss Plaintiffs' Puerto Rico law claims **WITHOUT**  
17 **PREJUDICE**.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 5<sup>th</sup> day of March, 2008.

20 s/José Antonio Fusté  
21 JOSE ANTONIO FUSTE  
22 Chief U.S. District Judge